

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

Application by SBC Communications, Inc.,) CC Docket No. 97-121
Southwestern Bell Telephone Company,)
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell)
Long Distance for Provision of In-Region)
InterLATA Services in Oklahoma)

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

**COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION IN SUPPORT OF
ALTS'S MOTION TO DISMISS**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits the following comments in response to the Common Carrier Bureau's request for expedited comment on the Motion to Dismiss filed by the Association for Local Telecommunications Services ("ALTS").¹

For the reasons explained below, CompTel urges the Commission to grant the ALTS motion and promptly to dismiss SBC's application.

I. SBC HAS FAILED TO ESTABLISH A PRIMA FACIE CASE UNDER TRACK A BECAUSE NO COMPETING PROVIDER IS SERVING RESIDENTIAL CUSTOMERS IN OKLAHOMA

Section 271(c)(1)(A) ("Track A") requires, *inter alia*, that a facilities based competitor be providing local exchange service to both residential and business subscribers in

¹ Public Notice, DA 97-864 (rel. April 23, 1997).

the state for which a BOC seeks interLATA authority.² SBC claims to meet this requirement through Brooks Fiber Properties, Inc. ("Brooks"), which it asserts is providing competitive service in Oklahoma to both residential and business subscribers.³ SBC has its facts wrong.

Brooks "is not now offering residential service in Oklahoma, nor has it ever offered residential service in Oklahoma."⁴ Brooks' only activity is a limited test of its ability to provide residential service.⁵ The test is confined to four Brooks employees and is not a general offer of residential service to actual subscribers in Oklahoma. It does not even appear that Brooks' four "customer" test is a telecommunications service at all, because it is neither available to the public nor offered for a fee.⁶

Put simply, no residential customer in Oklahoma can obtain local exchange service from a provider other than SBC at this time. It is not necessary for the Commission to determine the level of actual competition required under Section 271(c)(1)(A), for whatever the necessary level, it cannot be met when *no* carrier is offering competing service to residential subscribers in Oklahoma. Accordingly, SBC has failed to establish a *prima facie* case of compliance with Section 271(c)(1)(A). SBC's application should be dismissed.

² 47 U.S.C. § 271(c)(1)(A).

³ SBC Brief at 9.

⁴ Affidavit of John C. Shapleigh, ¶ 3, attached as Exhibit A to ALTS's Motion.

⁵ Brooks OCC Comments at 2; Shapleigh Aff. ¶ 5.

⁶ See 47 U.S.C. § 153(46) (definition of "telecommunications service").

II. TRACK B IS NOT AVAILABLE TO SBC IN OKLAHOMA

Because SBC has not established a *prima facie* case supporting its Track A claims, it is necessary also to address SBC's alternative claim that it may proceed under Section 271(c)(1)(B) ("Track B"). SBC contends that, if Brooks does not meet the actual competition standards of Track A then SBC's Statement of Generally Available Terms and Conditions ("SGAT") may be relied upon in support of its application.⁷ However, the statute expressly limits Track B only to situations where no competing provider has requested access and interconnection from the BOC. Because SBC itself claims to have negotiated 16 interconnection agreements, the factual predicate for Track B -- lack of an interconnection request -- is missing. Accordingly, SBC's reliance upon Track B is misplaced, and the Commission should dismiss the application.

It is clear from Section 271(c)(1) that a BOC must proceed under Track A, except in the narrow circumstances specified in Track B.⁸ Track A is the preferred approach because it provides the "tangible affirmation" that access and interconnection are producing actual competition to actual subscribers. Track B exists only as a protection against CLECs gaming the negotiation process in an effort to deny BOCs interLATA authority. It therefore is

⁷ SBC Brief at 14-15.

⁸ The two tracks are mutually exclusive. Congress' use of the disjunctive "or" in Section 271(c)(1) demonstrates that a BOC may proceed *either* under subsection A (Track A) or subsection B (Track B), but not both. Moreover, because Track B is limited solely to situations where no request is filed and Track A requires an agreement (which presumes the pre-existence of an interconnection request), the two sections are written such that when Track B applies (when no interconnection request exists) Track A cannot apply. Thus, SBC cannot proceed under both Track A and Track B simultaneously.

available only when "no [competing] provider has requested the access and interconnection described in subparagraph A [Track A]."⁹ If no competing provider has requested interconnection, a BOC may file a Statement supporting its application for interLATA authority. In all other circumstances, the BOC must satisfy the actual competition standard of Track A.

In Oklahoma, SBC reports sixteen negotiated interconnection agreements.¹⁰ Each agreement necessarily began with a "request for interconnection and access" to SBC's facilities. Indeed, SBC acknowledges that Brooks has submitted such a request.¹¹ As a result, SBC has received at least 16 requests for access and interconnection pursuant to the Act.¹² Therefore, Track B, by its terms, cannot apply in this situation.

SBC appears to interpret an interconnection request to be a springing event which does not occur until the requestor also satisfies the actual competition standard of Section 271(c)(1)(A). For example, it claims that Track B is applicable if Brooks does not "qualify" as a facilities based provider or if it had not "qualified" as such prior to the three-month

⁹ 47 U.S.C. § 271(c)(1)(B).

¹⁰ SBC Brief at 4-5 & n. 6. SBC also has engaged in arbitration under the Act with AT&T in Oklahoma. *Id.* at 5.

¹¹ *Id.* at 6 (noting that SBC is providing Brooks "interconnection and access to SWBT's network" pursuant to an agreement).

¹² Because providers such as Brooks have requested interconnection from SBC, it is not necessary to identify precisely what type of "request" qualifies to disable Track B. It also is not necessary to do so in order to prevent abuse of the request process. The possibility that providers might submit less than bona fide requests was considered by Congress and dealt with in the statute. If a provider submits a "request" (thereby disabling Track B), but either fails to negotiate in good faith or delays the implementation of an agreement, a BOC can revive Track B. *See* 47 U.S.C. § 271(c)(1)(B).

"window" referred to in Track B.¹³ This claim confuses *who* submits a request with *whether* an interconnection request is submitted, and would render all "requests" invalid unless and until the carrier begins providing actual services. There is no support for such an absurd interpretation in the statute. An interconnection *request*, not an agreement (or its implementation), disables Track B. Indeed, if the existence of a "request" depended upon the actual provision of service, the BOC would have an incentive to delay or obstruct actual service in order to maintain its ability to obtain interLATA authority by merely "offering" terms of its own choosing under Track B. This clearly was not Congress' intent in establishing the two Tracks of Section 271(c)(1).

CONCLUSION

For the foregoing reasons, CompTel supports ALTS's Motion to Dismiss. SBC cannot establish a *prima facie* case of compliance with Track A because neither Brooks nor any other CLEC is providing residential service in Oklahoma. Moreover, SBC's alternative attempt to rely upon Track B must be rejected because SBC has received at least 16

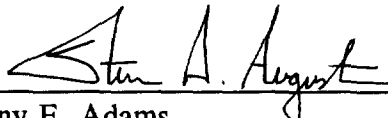
¹³ SBC Brief at 14-15.

interconnection requests in Oklahoma. Accordingly, the Commission should promptly dismiss SBC's application.

Respectfully submitted,

THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION

Genevieve Morelli
Executive V.P. and General Counsel
THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION
1900 M Street, N.W.
Suite 800
Washington, D.C. 20036
202-296-6650

By: 

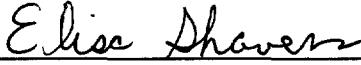
Danny E. Adams
Steven A. Augustino
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, D.C. 20036
202-955-9600

Its Attorneys

April 28, 1997

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing
COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION IN
SUPPORT OF ALTS'S MOTION TO DISMISS to be delivered on this 28th day of April,
1997 by either first class mail, postage prepaid or by hand delivery on all the parties listed
on the attached service list:



Elisa Shavers

James D. Ellis
Paul K. Mancini
Kelly M. Murray
175 E. Houston
San Antonio, TX 78205
Counsel for SBC Communications

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
One Bell Center
St. Louis, MO 63101
Counsel for SWBT

Roger K. Toppins
Amy R. Wagner
800 North Harvey, Room 310
Oklahoma City, OK 73102
Counsel for SWBT

Michael K. Kellogg
Austin C. Schlick
Jonathan T. Molot
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
1301 K Street, N.W., Ste. 1000 W
Washington, D.C. 20005
Counsel for SBC Communications &
Southwestern Bell Telephone Co.

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Thomas A. Boasberg
Federal Communications Commission
International Bureau
2000 M Street, N.W.
Room 819
Washington, D.C. 20554

James R. Coltharp
Federal Communications Commission
Office of Comm. Quello
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Daniel Gonzales
Legal Advisor - Comm. Chong's
Office
Federal Communications Commission
1919 M Street, N.W. -- Room 844
Washington, D.C. 20554

James L. Casserly
Sr. Legal Adv. -- Comm. Ness' Office
Federal Communications Commission
1919 M Street, N.W. -- Room 832
Washington, D.C. 20554

Regina Keeney
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W. -- Room 500
Washington, D.C. 20554

Richard Metzger
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W. -- Room 500
Washington, D.C. 20554

Richard K. Welch
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W. -- Room 544
Washington, D.C. 20554

Craig Brown
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W. -- Room 544
Washington, D.C. 20554

Melissa Waksman
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W. -- Room 544
Washington, D.C. 20554

Richard J. Metzger
Association for Local
Telecommunications Services (ALTS)
1200 19th Street, N.W.
Suite 560
Washington, D.C. 20036